

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

PANEL A

IN RE: JOEL DAVID BOYD, Respondent
Arkansas Bar ID#90019
CPC Docket No. 2008-018

FILED

APR 06 2009

**LESLIE W. STEEN
CLERK**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Gwen Young in an Affidavit dated February 10, 2008. The information related to Mr. Boyd's representation of Mazda American Credit Ford Motor Credit in 2007.

On March 17, 2008, Respondent was served with a formal complaint, supported by affidavit from Ms. Young. Respondent filed a timely response to the formal complaint. Following denial of Respondent's Motion to Dismiss, the matter proceeded to ballot vote pursuant to the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law. After notice of the ballot vote decision, Respondent requested a *de novo* hearing pursuant to Section 11 of the Procedures. The *de novo* hearing was held before Panel A on March 20, 2009. The hearing proceeded before the Committee after Ms. Brownstein renewed the Motion to Dismiss filed on behalf of Mr. Boyd. The Committee denied the Motion to Dismiss. At the hearing, Panel C Member Scott Stafford sat in place of Win Trafford, regular Panel A member, who recused in the matter. Panel C Member Searcy Harrell sat in place of Jerry Pinson, who was unavailable for the hearing. Panel D Member Benton Smith sat in place of regular Panel A member Phil Hout who was unavailable. Panel D Member Ronnie Williams

sat in place of regular Panel A member Elaine Dumas who was also unavailable.

The Office of Professional Conduct was represented by Nancie M. Givens, Deputy Director and Michael E. Harmon, Senior Staff Attorney. Respondent Boyd appeared with his counsel Bettina Brownstein and Jeffrey Wood. During the course of the hearing, the Committee heard the testimony of Gwen Young, Mr. Boyd, Paul A. Prater, Honorable John Plegge, Honorable Ellen Brantley, and Tina Tucker.

The information before the Committee reflected that on August 2, 2007, Gwen Young received a telephone call at her home, from an individual who identified herself as being with Ford Motor Credit. She advised that she was calling about a Mazda that had been repossessed. After that introduction, the individual asked Ms. Young for her Social Security number. Ms. Young advised her that she did not give that information out over the telephone. The caller's reply was how would she know if she had the right person. Ms Young advised her to send something in writing. Ms. Young testified that during the conversation Ms. Young also explained that she never had a Mazda and that she never signed for anyone else to have one. Ms. Tucker, the collection agent for Hosto, Buchan, Prater and Lawrence, where Mr. Boyd is employed, offered contradictory testimony and stated that Ms. Young never denied that the debt was hers.

After the telephone call, Ms. Young checked the number (1-800-892-1460) which the individual called from on August 2, 2007. The number is for the Hosto and Buchan Law Firm, not Ford Motor Credit. According to Ms. Young, the caller did not identify herself properly nor did she tell the truth about from where she was calling. Ms. Tucker testified that she did state she was calling from the law firm on behalf of Ford Motor Credit.

Although it was Ms. Young's understanding that within five (5) days of calling someone a debt collector is to send a letter which sets out what the debt is and also to provide the alleged debtor an opportunity to dispute the debt, Ms. Young did not receive any letter with that information. What she received was a letter which set out that she had requested a consent judgment. Ms. Young did not ask for a consent judgment, but rather she explained that the debt was not hers. The enclosure in the letter which she received was a Consent Judgment. Mr. Boyd and Mr. Prater testified that it was a mistake that the consent judgment was sent to Ms. Young. However, Tina Tucker testified that she used her own judgment on when to send Consent Judgments and she chose to send one in this instance. Mr. Prater testified that this was against office policy and procedure. He did not have a copy of the office policy and procedure for the Committee for review.

The letter Ms. Young received also states that "if the original, signed Consent Judgment, is not returned before your court date, this matter will not be taken off the docket." This is also an untruth, because the matter was not set on the Court's docket for hearing or other action. Mr. Boyd said that there would have been a hearing, but at the time the letter was sent there was no specific date set.

At the time that this all occurred, Ms. Young sent a letter to Mr. Boyd setting out all of this information and copied the Office of Professional Conduct and Judge Brantley. Judge Brantley was the Judge assigned to the civil lawsuit filed by Hosto and Buchan against a Gwen Young. A letter was sent in reply to Judge Brantley and Mr. Ligon, with copy to Ms. Young. The letter was written by Paul Prater, an attorney with the Hosto, Buchan, Prater and Lawrence law firm. Judge Brantley, upon review of the file maintained by the Pulaski County Clerk's

office, offered her opinion that Mr. Boyd had not acted unethically in this matter.

Mr. Boyd explained to the Committee that in November 2006, the law firm received this file for collection from Ford Motor Credit with instructions to collect a debt from Gwendolyn Young with a certain Social Security number. According to Mr. Boyd, months were spent trying to contact Ms. Young by mail and telephone despite having a good telephone number. Mr. Boyd advised that Ms. Young never disputed the debt. He acknowledged sending the letter and consent judgment for her review. He said that his law firm treats letters, like the one Ms. Young sent the Court, as an answer. This is in spite of the fact that Ms. Young had never seen the Complaint but just the consent judgment, which she did not request.

In Mr. Boyd's sworn response to the Committee, he asserted that the telephone number at which Gwen Young was reached was the telephone number given to the firm by their client, Ford Motor Credit. Tina Tucker, the former employee of Hosto, Buchan, Prater and Lawrence, testified that she obtained the telephone number from Lexis / Nexis. When questioned about this by a Committee member, Mr. Prater, during his testimony, acknowledged that the statement in the sworn response was not accurate but was a misstatement.

According to Mr. Boyd, after receiving the letter, Mr. Prater filed a Motion to Quash Service. Later, Mr. Boyd moved to dismiss the case against Gwendolyn Young. Mr. Boyd asserted that none of his actions with regard to Ms. Young was inappropriate. Ms. Young never received a copy of the Motion to Dismiss or the Order to Dismiss from Mr. Boyd or the law firm.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, the testimony of the listed witnesses, and the Arkansas Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. By a 6 - 1 vote, with Panel Members Shults, Stafford, Harrell, Smith, Williams and Herr finding a violation, that Mr. Boyd's conduct violated Rule 4.1(a) because in the letter of August 2, 2007, sent to Ms. Young, as he attempted to recover a debt owed to his client, Ford Motor Credit Company, he stated that, if the original, signed consent judgment were not returned by the court date, the matter would not be removed from the docket. There was no court date scheduled despite the statement by him which clearly implies that there was, even though he knew the same was not true, as he had not secured service of the Complaint on anyone at that time. His statement about a court date was false. Rule 4.1(a) requires that, in the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person.

2. By a unanimous vote, that there was no violation of Rule 4.3 as alleged in the formal disciplinary complaint.

3. By a 5 - 2 vote, with Panel Members Shults, Harrell, Smith, Williams and Herr finding a violation, that Mr. Boyd's conduct violated Rule 4.4(a) because the letter and the contents, including the statement about a court date, thereof served no purpose except to attempt to cause Ms. Young to sign a Consent Judgment for a debt she did not owe and therefore to burden her with payment of the debt. Rule 4.4(a) requires, in pertinent part, that in representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay or burden a third person.

4. By a 6 - 1 vote, with Panel Members Shults, Harrell, Stafford, Smith, Williams and Herr finding a violation, that Mr. Boyd's conduct violated Rule 8.4(c), because his letter of August 2, 2007, stated that Ms. Young had to return the original signed consent judgment back

before the Court date or her matter would not be removed from the Court's docket, even though there was no scheduled court date and was not set on the Court's docket. Rule 8.4(c) requires that a lawyer not engage in conduct involving dishonesty, fraud, deceit or misrepresentation

5. By a 6 - 1 vote, with Panel Members Shults, Harrell, Stafford, Smith, Williams and Herr finding a violation, that Mr. Boyd's conduct violated Rule 8.4(c), because his letter of August 2, 2007, stated that Ms. Young had requested the consent judgment be sent to her which was not true, since she had denied the debt and requested something in writing from the law firm about the debt. Rule 8.4(c) requires that a lawyer not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

6. By a 4 -3 vote, with Panel Members Herr, Harrell, Smith and Williams finding a violation, that Mr. Boyd's conduct violated Rule 8.4(c) because the Consent Judgment he sent to Ms. Young contained a statement that she had notice of the lawsuit and by signing the Consent Judgment waived any issues regarding service, even though Ms. Young had not been advised of the lawsuit and did not know one was pending. Rule 8.4(c) requires that a lawyer not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that JOEL DAVID BOYD, Arkansas Bar ID#90019, be, and hereby is, CAUTIONED for his conduct in this matter. Mr. Boyd is ordered to pay the costs of this proceeding in the amount of \$250, pursuant to Section 18.A. of the Procedures. The costs are the standard Committee costs of \$50 and the Court Reporter's appearance fee of \$200. The costs assessed herein, totaling \$250, shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the

Office of Professional Conduct within thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL A

By: Steven Shults
Steven Shults, Chair, Panel A

Date: April 6, 2009